

PART 1906—ADMINISTRATION WITNESSES AND DOCUMENTS IN PRIVATE LITIGATION [RESERVED]

PART 1908—CONSULTATION AGREEMENTS

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AUTHORITY: Secs. 7, 21, Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 670); Secretary of Labor's Order No. 9-83 (48 FR 35736).

SOURCE: 49 FR 25094, June 19, 1984, unless otherwise noted.

§ 1908.1 Purpose and scope.

(a) This part contains requirements for Cooperative Agreements between States and the Federal Occupational Safety and Health Administration under sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) under which OSHA will utilize State personnel to provide consultative services to employers. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but offsite assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific

hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

(b) Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA enforcement activities. States entering into Agreements under this part will receive ninety percent Federal reimbursement for allowable costs, and will provide consultation to employers requesting the service, subject to scheduling priorities, available resources, and any other limitations established by the Assistant Secretary as part of the Cooperative Agreement.

(c) In States operating approved Plans under section 18 of the Act, the provisions of this part which establish policies governing enforcement activities do not apply to safety and health issues covered by the State Plan. States operating such Plans shall, in accord with section 18(b), establish policies which are at least as effective as Federal policies.

§ 1908.2 Definitions.

As used in this part:

Act means the Federal Occupational Safety and Health Act of 1970.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health.

Compliance Officer means a Federal compliance safety and health officer.

Consultant means an employee under a Cooperative Agreement pursuant to this part who provides consultation.

Consultation means all activities related to the provision of consultative assistance under this part, including offsite consultation and onsite consultation.

Cooperative Agreement means the legal instrument which enables the States to collaborate with OSHA to provide consultation in accord with this part.

Designee means the State official designated by the Governor to be responsible for entering into a Cooperative Agreement in accord with this part.

Education means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment which is safe and healthful.

Employee means an employee of an employer who is employed in a business of that employer which affects commerce.

Employer means a person engaged in a business who has employees, but does not include the United States, or any State or political subdivision of a State.

Hazard correction means the elimination or control of a workplace hazard in accord with the requirements of applicable Federal or State statutes, regulations or standards.

Imminent danger means any conditions or practices in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the procedures set forth in § 1908.6(e)(4), (f) (2) and (3), and (g).

Offsite consultation means the provision of consultative assistance on occupational safety and health issues away from an employer's worksite by such means as telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

Onsite consultation means the provision of consultative assistance on an employer's occupational safety and health program and on specific workplace hazards through a visit to an employer's worksite. It includes a written report to the employer on the findings and recommendations resulting from the visit. It may include training and education needed to address hazards, or potential hazards, at the worksite.

OSHA means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under section 18 of the Act for the enforcement of occupational safety and health standards in that State.

Other-than-serious hazard means any condition or practice which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart.

RA means the Regional Administrator for Occupational Safety and Health of the Region in which the State concerned is located.

Serious hazard means any condition or practice which would be classified as a serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

State includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Training means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment which is safe and healthful.

§ 1908.3 Eligibility and funding.

(a) *State eligibility.* Any State may enter into an Agreement with the Assistant Secretary to perform consultation for private sector employers; except that a State having a Plan approved under section 18 of the Act is eligible to participate in the program only if that Plan does not include provisions for federally funded consultation to private sector employers.

(b) *Reimbursement.* (1) The Assistant Secretary will reimburse 90 percent of the costs incurred under a Cooperative Agreement entered into pursuant to this part. Approved training of State staff operating under a Cooperative Agreement and specified out-of-State travel by such staff will be fully reimbursed.

(2) Reimbursement to States under this part is limited to costs incurred in providing consultation to private sector employers only.

(i) In all States with Plans approved under section 18 of the Act, consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of this part. Federal reimbursement for these activities will be made in accordance with the provisions of section 23(g) of the Act.

(ii) In States without Plans approved under section 18, no Federal reimbursement for consultation provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

§ 1908.4 Offsite consultation.

The State may provide consultative services to employers on occupational safety and health issues by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

§ 1908.5 Requests and scheduling for onsite consultation.

(a) *Encouraging requests—*(1) *State responsibility.* The State shall be responsible for encouraging employers to re-

quest consultative assistance and shall publicize the availability of its consultative service and the scope of the service which will be provided. The Assistant Secretary will also engage in activities to publicize and promote the program.

(2) *Promotional methods.* To inform employers of the availability of its consultative service and to encourage requests, the State may use methods such as the following:

- (i) Paid newspaper advertisements;
- (ii) Newspaper, magazine, and trade publication articles;
- (iii) Special direct mailings or telephone solicitations to establishments based on workers' compensation data or other appropriate listings;
- (iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;
- (v) Solicitation of support from State business and labor organizations and leaders, and public officials;
- (vi) Solicitation of publicizing by employers and employees who have received consultative services;
- (vii) Preparation and dissemination of publications, descriptive materials, and other appropriate items on consultative services;
- (viii) Free public service announcements on radio and television.

(3) *Scope of service.* In its publicity for the program, in response to any inquiry, and before an employer's request for a consultative visit may be accepted, the State shall clearly explain that the service is provided at no cost to an employer through Federal and State funds for the purpose of assisting the employer in establishing and maintaining effective programs for providing safe and healthful places of employment for employees, in accord with the requirements of the applicable State or Federal laws and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take necessary action to eliminate employee exposure to